

Senate Hearing April 22, 1998

Commerce Committee

Subject: Death on the High Seas (DOSHA)

Testifier: John Sleavin, Brother and Uncle of Mike, Ben, and Annie Rose Sleavin Killed
November 24, 1995 by the Pan Grace of Seoul Korea

Senators I want to thank you for letting me testify before you. I especially want to thank Senator Wyden for bringing my plea for justice to the Committee's attention and Chairman Hutchison and Chairman McCain for inviting me to testify today. I ask that the Committee print my entire written statement in the hearing record.

It is a great honor to be here and to be heard by you. I have come here as a private citizen representing my family both alive and dead. I have not come here representing an interest group. No one I know will benefit financially from changing the DOSHA law. I have come at my own expense to Washington. And for what? I have come for justice. I have come for peace. It may sound trite but it is true, as is my cause. I have come to make sure that you see to it that there is justice on the High Seas and to bring peace to me, my family, all of those who cross the High Seas, and peace to Judith my devastated sister-in-law.

I will relate to you the last hours of my brother Mike, my niece Annie Rose, and my nephew Benjamin, and the horror that follows my sister-in-law Judith to this day. And if this is not enough, I will let you know the injustice of DOSHA as it is written today. Leaving in your hands, the ability to bring justice to the High Seas. To bring justice and peace to all who cross the High Seas.

The following is from depositions of Judith Sleavin and the Korean freighter personal:

A. MELINDA LEE - Prior to Collision

On November 16, 1995, the yacht MELINDA LEE departed from Nuku'alofa, Tonga, for a passage to the Bay of Islands, New Zealand. The MELINDA LEE, a 47-foot Compass sailing yacht, was owned by Mike and Judith Sleavin. They were accompanied by their two children, Benjamin Timon Sleavin, age 9 and Annie Rose Sleavin, age 7.

My brother and his family had began their long-planned voyage on the MELINDA LEE from the Port of San Diego on March 1, 1993. In November 1995, after 33 months of sailing, they were planning the crossing to New Zealand. The voyage between Nuku'alofa, Tonga, and the Bay of Islands, New Zealand, is approximately one thousand miles. They had estimated the voyage would take about seven days.

The MELINDA LEE was equipped with up-to-date navigation and safety equipment. This

included (1) a collision avoidance radar detector ("CARD") mounted on the stern structure, which produced a loud piercing alarm in response to a radar (microwave pulses) from another vessel; (2) a Firdell Blipper Radar reflector, mounted approximately 30-35 feet above the deck on the mast, which increased the size and ease of detection of the MELINDA LEE by a vessel using radar; (3) four auxiliary boats consisting of a six-person, Goodyear inflatable life raft equipped with survival gear and provisions, an eight-foot sailing dinghy, and a seven-foot Avon inflatable dinghy, and an 11-foot ABS inflatable dinghy with a hard bottom; (4) three VHF radios, two of which were on 24 hours monitoring emergency Channel 16; (5) navigational lights consisting on a tri-color light (red, green sidelights and white aft) on the 55-foot mast head, and a white light mounted on the transom and red/green lights at the deck level just aft of the bow; (6) an "abandon ship" bag with emergency supplies and equipment; (7) Furuno 1600 Radar; and (8) seven foam-type and four inflatable personal flotation devices ("PFD"). My brother was nothing if not fanatical about safety.

They had been waiting at Nuku'alofa, as part of a group of 28 yachts, for favorable weather conditions before commencing the voyage to New Zealand. The MELINDA LEE sailed from Tonga on November 16, 1995. During the voyage, at various times, it traveled in the company of several other yachts. The group of yachts maintained radio contact when all yachts checked in at specific times of the day. In addition, Mike and Judith were also in radio contact with three other boats several times a day.

On the morning of November 23, 1995, the MELINDA LEE's estimated time of arrival at the Bay of Islands, New Zealand, was 6:00 a.m. November 24. That morning the wind was from the northeast quadrant at 25 mph, with gusts less than 35 mph, and the sea was 8 to 12 feet. During the day of November 23, the sea conditions were moderate. The MELINDA LEE was sailing comfortably, utilizing only a staysail.

After dinner, on the evening of November 23, 1995, Mike assumed watch in the cockpit of the MELINDA LEE between 8:00 and 9:00 p.m. Both Annie and Benjamin had already gone to bed and Judith attempted to get some sleep. By late evening of November 23 the sea and wind conditions had worsened slightly, and there was intermittent light rain.

Judith was scheduled to relieve Mike from 0100 to 0300 on November 24. Prior to taking over the watch, she obtained the MELINDA LEE's G.P.S. (Global Positioning Systems) position, its speed (6-1/2 knots), and confirmed the course at 195 magnetic. Judith determined that the position of the MELINDA LEE was a little west of the rhumb line and headed directly to their waypoint. She then dressed to take her place in the cockpit. Her protective outfit included fleece pants and a fleece sweatshirt, foul-weather overalls, jacket, and a wool hat. Before she assumed her station in the cockpit, she put on her harness/personal flotation device which was already tethered to the vessel.

Before taking over the watch at 0100, Judith and Mike discussed sea conditions. After Judith assumed the watch, Mike descended the companionway and went to bed in the off-watch bunk, located on the port side adjacent to the left companionway ladder.

Between 0100 and 0200, Judith made complete 360 observations of the horizon every 15 minutes. These observations were made from the cockpit. She would also repeatedly scan the horizon whether sitting or moving about the cockpit. There was a VHF radio located on the cockpit and one at the navigation station below, both of which were audible to everyone on the MELINDA LEE.

Between 0100 and 0200, Judith estimated that the visibility was approximately four to seven miles. She would have seen any navigational lights as far as seven miles away with her naked eye. When her 15 minute wrist watch alarm sounded at 0200 on November 24, 1995, she followed her 360 observation routine, "only slower". When approaching landfall, consistent with good practices and in accordance with maritime law, hourly she went below to the navigation station to obtain the position of the MELINDA LEE on the G.P.S. and then return quickly to the cockpit. She was particularly careful in her observations because she "...wanted to be really exact to make sure there were no dangers when I went down below." Judith spent close to 5 minutes scanning the horizon.

B. M/V PAN GRACE - November 24 1995, between 0000-0230

(1.) Assuming of 0000 - 0400 Watch by Second Mate

On November 23, 1995, at 0915, the M/V PAN GRACE, a 540-foot long bulk carrier, loaded with logs, departed from the Port of Tauranga, New Zealand, en route to Inchon, Korea. As the vessel sailed northbound en route to Korea, the sea and weather conditions worsened during the 2000 to 2400 watch. The Second Mate, Sang Yun Han, took over the 0000-0400 bridge watch from the Third Mate at 2345 November 23. When he assumed the watch, the "visibility was restricted." It was raining "on and off," and foggy.

Mr. Han testified the Automatic Radar Plogging Aid ("ARPA") had not been turned on between 0000-0200 on November 24. ARPA, in conjunction with the PAN GRACE's main radar, (a.) provided automated long range scanning; (b.) sounded an alarm when another vessel was within a predetermined distance ("guard ring") from the PAN GRACE or became a dangerous target; (c.) calculated the speed and bearing of another vessel; and (d.) automatically calculated a sufficient course alteration to avoid collision. Although 72 COLREGS, Rule 7 requires the use of all available means, including the use of ARPA, to determine if a risk of collision exists, Mr. Han saw fit not to turn on this available aid to navigation. ARPA's use is especially crucial when poor visibility or adverse sea and weather conditions exist.

(2.) Spotting of Red Light (MELINDA LEE)

At some time between 0130 and 0200 on November 24, the Helmsman advised Han that he saw a dim light to starboard. In a statement to the Inchon District Maritime Investigation Office, the Helmsman said that he did not "...[know] the distance, but it was a dim red light." In a later statement of facts taken by the Korean Marine Surveyors on February 2, 1996, he again states that he "...observed a dimmed red light [which] appeared and disappeared soon in the relative direction of 1-1/2 o'clock which was reported to the Second Mate who was the officer on watch."

Upon being informed of the red light, Mr. Han stationed himself at a forward starboard window, located 3-4 feet from the door to the starboard wing of the bridge.

Mr. Han estimates that the red light was located 30 to 40 starboard of the bow. He recognized that the red light meant he was observing the port side of a crossing vessel from the PAN GRACE's starboard side, and that the PAN GRACE was in a "give-away" vessel under the COLREGS regulations. Under Rule 15, he was required to take the necessary action to avoid the MELINDA LEE, the "stand-on" or privileged vessel, in a crossing situation. Although Mr. Han was unable to target the "red light" vessel on radar, he made no attempt to reach the MELINDA LEE over Channel 16 of the bridge's VHF radio to determine its course, intentions, or to notify the MELINDA LEE of the approach of the PAN GRACE.

Mr. Han gave the Helmsman a rudder angle order to turn the vessel 10 starboard.

Prior to allegedly ordering the Helmsman to make the 10 rudder angle change to avoid the collision, Mr. Han had made no calculations to determine whether a 10 rudder change to starboard was sufficient: "It is purely up to the watch keeping officer's own judgement." Mr. Han did not sound the ship's whistle or initiate any light signal or radio the MELINDA LEE over VHF.

(3.) Disappearance of the MELINDA LEE

Mr. Han saw the "[MELINDA LEE]...with [his] naked eye while the vessel was turning." The last time Mr. Han "...saw the red light [was] at the bow slightly to the starboard." Mr. Han "thought that the vessel probably passed the port side but never saw a red light on the port side of the M/V PAN GRACE. He could not see the bow of the PAN GRACE while looking forward because large cargo cranes created a "blind section," and blocked his view.

After the MELINDA LEE disappeared in front of the bow, Mr. Han finally went out on the port wing. He did not take his binoculars with him and only stayed out on the port wing "a matter of moments." Mr. Han only looked forward and not to the rear and was not able to observe any red light from the port wing of the bridge. At that point, Mr. Han "...just took for granted that it passed by." Mr. Han "...didn't think about the location of the red light. [He] only assumed that it is somewhere on the left side...[and he had] no reason to doubt."

Mr. Han made no attempt to locate the MELINDA LEE with the vessel's search light, no broadcast was made to vessels in the vicinity on emergency Channel 16; and he allegedly did not call the Captain in accordance with Standing Order No. 20. Mr. Han had "no doubt at all" as to whether the PAN GRACE had collided with the MELINDA LEE. "Nor was there any reason to go back to the point where the red light vessel disappeared in front of the bow."

C. Destruction and Sinking of the MELINDA LEE; Deaths of Annie, Benjamin and Michael Sleavin

(1.) The Collision

After completing her observations for navigation lights after 0200, Judith went below, removed her tethered PFD, and then proceeded to the navigation station. She obtained the G.P.S. reading, plotted the position of the MELINDA LEE on the chart and found that they were approximately 1-1/2 miles from the rhumb line. There were 28 miles until the vessel reached its waypoint. The wave height was now 8 to 12 feet, winds were from the northeast quadrant, just aft of the port beam. The vessel was sailing easily with staysail and holding true to the course of 195 magnetic. Judith promptly made the log entries, got up, and proceeded towards the companionway ladder to get her harness. Before she reached her PFD and harness, she heard "three loud booms." After the booms, she immediately felt a hard blow to the back of her right ear and was pushed down. The inside of the cabin immediately filled with a rush of sea water mixed with diesel oil. Judith recalls opening her eyes, realizing that she was submerged in water. She looked up and saw a few bubbles of air at the ceiling and about a 12x12 inch piece of teak bobbing and floating over her head. The hatch above her, in the galley, was gone and the main companionway hatch was also sheared off. She swam up through diesel, water and debris to the now open hatchway.

When Judith reached the deck, forward of the cockpit, the MELINDA LEE was 4 inches under water. Mike and Annie Rose were on the deck but Benjamin was not. The MELINDA LEE was going down rapidly. The mast, rigging, hatch covers, seven-foot Avon, eight-foot dinghy, and most critically the Goodyear life raft and cradle had been sheared from the deck. All that remained was the half-inflated 11-foot ABS hard bottomed inflatable dinghy, which was in the water on the starboard side of the MELINDA LEE, attached by a painter secured to a U-bolt.

When Judith got on deck, Mike ordered her to get into the dinghy with Annie and said "...I'll go get Benjamin." The MELINDA LEE was rapidly submerging. Judith frantically told Mike that he would "...not be able to see through all the diesel and...debris," and that he would become trapped in the cabin, "...and I'll lose you both." Judith and Annie Rose got into the dinghy. The deck of the MELINDA LEE was now beneath 15 inches of water, the cabin was filled with water, diesel and debris, and the vessel was sinking quickly; Mike realized that an attempt to rescue Benjamin was futile, and that Benjamin was trapped in the sinking vessel. Mike swam to the dinghy. Annie became hysterical over Benjamin. Then suddenly the MELINDA LEE started going down really fast and the dinghy was being pulled down with it because it was still attached. They were all screaming with terror and then the painter parted from its shackle and the dinghy came popping up to the surface.

At about 0220, Mike said "there is the ship" which rammed them. It was turning starboard. There were no visible navigation lights on the vessel, no red or green sidelight, masthead or stern lights. Judith was able to see three rows of white lights which were not navigation lights. She estimated that the vessel was a couple of hundred feet away and moving quickly. The area around the MELINDA LEE had become becalmed by the diesel oil on the surface which had escaped from the vessel's ruptured diesel tank. All the emergency provisions were in the Goodyear life raft and there had been no chance to get to the abandon ship bag. Both Mike and Annie Rose, who were dressed only in their sleep wear, had swum for their lives from the flooded cabin. They were now 50 miles from shore in the cold southern ocean.

(2.) Return of the PAN GRACE

Within 10 minutes after the PAN GRACE left the scene of the collision, the dinghy flipped in the heavy seas and the family all fell into the sea. After Mike and Judith righted the dinghy and helped Annie Rose in, the dinghy flipped a second time, and then a third time. After righting the dinghy a third time, the PAN GRACE appeared in close proximity to the dinghy:

Then all of the sudden there was rows of lights again, but this time there were faces. Mike and I and Annie stood up in the dinghy...and we yelled as loud as we could, 'help us, save us, don't leave, help us' and they just kept going. They never slowed down. They came within 75 feet - 50 to 100 feet of us, and they just left us to die.

When the lights of the PAN GRACE had come into view this second time within 50-100 feet, Judith observed approximately three rows of lights. The vessel circled around the dinghy, from port to starboard. As the vessel passed, my family was able to see light complected faces, with very dark short hair at these rows of lights. When the PAN GRACE sailed by, the dinghy flipped again a fourth time. To prevent this from reoccurring, the family were forced to sit on the hard bottom of the overturned dinghy.

(3.) Michael, Judith and Annie Rose - Abandoned and Adrift

After a short time, the remaining members of the Sleavin family became very cold. Judith took off her jacket and gave it to Annie Rose. Mike began shivering from the cold but refused to wear Judith's overalls telling her: "If you give me the overalls, we will all die. This way at least you have a chance." It became progressively colder, and it was apparent to Judith that Mike was suffering from hypothermia. Annie Rose was trying to keep Mike talking, but he was becoming delusional. Judith and Annie Rose tried to remain positive and talked about being rescued. When the sun rose, they could see landfall in the distance. That morning they were experiencing swells over ten feet in height. Judith and Annie Rose kept talking to Michael even though he did not respond. By this time, they could see sailboats close to land and what appeared to be the entrance to Opuia, the New Zealand Bay of Islands. The dinghy appeared to be drifting closer to land. The waves, however, were getting larger.

(4.) Death by Drowning of Michael and Annie Rose

During the morning of November 24, suddenly a "...big wave comes out of nowhere, and our dinghy is coming up and up and up, and then [the wave] curls and crushes on us, and we all just went in three different directions," thrown off the dinghy. Annie Rose came up on one side of the dinghy, on the high side of the wave. Judith came upon the low side of the wave, and Mike was off in the distance. Annie started floating past Mike. "Mike said, 'I'll get Annie. You get the dinghy'...And when I got the dinghy, I could hear Annie screaming 'Mommy, mommy, mommy, come save me.'" At that point,

I grabbed onto the dinghy, and then I looked at her. 'Mommy, mommy,' and then she started

choking on water, and her face went down, and her hands and legs went out, and she was floating face down. And Mike was with her, and I screamed from my gut like I never screamed before. And Mike and I were probably 50 feet away maybe 75 feet away...and he was holding onto Annie's arm, and he looked at me, and I looked at him and he waved..Mike was waving good-bye. As soon as Annie died, he didn't just wave good-bye. We just stared at each others eyes for the longest time and then he waved...[He then] went straight down. For several hours after that, I watched Annie's red jacket floating on the surface and getting smaller and smaller and smaller...

Annie Rose and Mike died somewhere between 1025 and 1045 on the morning of November 24, approximately eight and a half hours after the MELINDA LEE was rammed by the PAN GRACE. There would have been more than adequate time for New Zealand coastal search and rescue, and other ships, to come to their aid had the PAN GRACE notified New Zealand authorities of the disappearance of a vessel in front of its bow. This could have occurred in spite of the failure of the M/V PAN GRACE to stand-by and rescue, if only the vessel had broadcast the disappearance over Channel 16 and notified the New Zealand search and rescue agency.

(5.) The next Fifty-Four Hours of Terror Before Rescue

Judith sat on the dinghy crying, attempting to remain awake. She was extremely cold, shivering, was without food or water, and was becoming hypothermic. The seas continued to worsen, and there were waves over 20 feet. The swells had wave-like curls. The dinghy and Judith were covered with countless jellyfish. An Albatross followed the dinghy and tried to peck one of its inflated tubes. During the daylight hours on November 24, the current pushed the dinghy toward landfall, but on the night of the 24th, it was pushed farther out to sea. During the night of the 24th, Judith could see the lights of sailboats miles away, which she thought were part of the Tonga group. She kept screaming but the boats were too far away to hear her.

When the sun rose on November 25, the current had again pushed the dinghy close to land. Judith was experiencing mental and physical deterioration. She observed that the approaching landfall had steep cliffs protected by rocks and pounding surf. With whatever strength she had left, she managed to point the dinghy toward a small beach, which was also partially surrounded by rocky outgrowths. As the incoming surf pushed the dinghy toward the beach, it became caught on top of a large partially submerged rock covered with the sharp shells of marine organisms.

By this point, Judith was experiencing excruciating pain in her back and she lacked any feeling below her waist. With great difficulty, and holding on to the dinghy, she managed to paddle slowly towards the small beach. She finally reached a steep bank below the beach, which was being pounded by the surf. This bank, too, was covered with sharp gravel and rocks. It took Judith approximately two hours to pull herself up the bank, while being struck and repeatedly pulled down by the crashing surf.

By the time she reached the beach, it was 8:15 p.m. on November 25. She had spent a total of approximately 42 hours on the open sea from the time the MELINDA LEE sank. She was very wet, cold, shivering, and smelled of diesel. After partially wringing out her clothes, she fell

asleep. Finally on November 26, at 4:00 p.m., she was spotted by a plane after 62 hours without food or water. Twenty minutes later, two power boats approached, and a dinghy brought two men to the beach. She was given a cup of water, and started to cry uncontrollably when asked about her family. She was unable to move her lower body, and a rescue helicopter was needed to transport her to Whangarei Base Hospital in Whangarei, New Zealand. She was kept for over a month in the Whangarei hospital

To this day Judith still has flash backs. She will be sitting in her room and then for hours her dead daughter and husband are floating face down in the carpet in front of her. She has head injuries which have left her disabled. She has extreme attacks of anxiety and is on sedatives. I could go on and on about the horror of the past two and a half years for Judith. A horror that is not likely to end any time soon.

And for all of this, The Korean ship that failed to give way; the Korean ship that was not using its avoidance radar as required; the Korean ship that returned to my family floating in the open ocean, and then abandoned them; the Korean ship that did not even radio anyone to start a search and rescue mission. All of this and what does DOSHA, a 1923 maritime law say:

That the Koreans only have to pay for the value of the Melinda Lee and the future life time earnings of my brother. They got to kill my nephew and niece for free. If they would have been lucky enough to have Judith die at sea as well they would have only had to pay for the value of the Melinda Lee. That is assuming that they would have been caught.

The only court that can prosecute the Koreans for criminal acts is a Korean court. So far (two and a half years later) They have failed to do anything. DOSHA, which applies in US courts, does not allow for any punitive damages for what the Koreans did. In fact it is cheaper to make sure everyone dies the way DOSHA stands today. And I ask you senators, men and women of this great institution of the people of America called the US Congress, Is this justice? Did you come to Washington to allow these type of laws to stay as they are, laws that are good for Korean Freighters at the cost of American children's life.

Changing this legislation in no way stands to benefit me or anyone I know. I have come to Washington at considerable expense to myself, to my job, and my own family for two reasons and two reasons only. JUSTICE and PEACE. Justice on the High Seas. Justice in the law. Justice which you and you alone have the power to grant. And I have come for Peace. Peace of mind knowing that I am seeking justice. Peace and safety that you have the power to grant to the America people crossing the High Seas. The people that have sent you here. And ultimately Peace for Judith.

I implore you, I beg you, pass this DOSHA legislation and grant justice and peace to all those crossing the High Seas. Justice for my slain family. Peace for some of the horror that haunts Judith to this day.